

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§ No. 470, 2009
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
CARL DANBERG, et al.,	§ C.A. No. 09M-06-010
	§
Respondents Below-	§
Appellees.	§

Submitted: December 4, 2009

Decided: January 15, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of January 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, James Arthur Biggins, a prison inmate, filed an appeal from the Superior Court's August 10, 2009 dismissal of his constitutional claims against prison officials because of his failure to pay the Superior Court filing fee. We find no merit to the appeal. Accordingly, we affirm.

(2) In June 2009, Biggins filed a petition in the Superior Court requesting the issuance of an extraordinary writ of mandamus directing officials from the Department of Correction to provide him with adequate

medical care as required under the Eighth Amendment of the United States Constitution. On July 13, 2009, the Superior Court denied Biggins' request for *in forma pauperis* ("IFP") status.¹ The Superior Court also ruled that, because Biggins had failed to demonstrate that he was in imminent danger of physical injury,² he was required to pay the Superior Court filing fee within 15 days of the date of the order or his petition would be dismissed. Because the filing fee was not paid as required, the Superior Court dismissed Biggins' petition on August 10, 2009.

(3) In this appeal from the Superior Court's dismissal of his mandamus petition, Biggins claims that the Superior Court abused its discretion when it a) denied his request for IFP status; and b) dismissed his mandamus petition.

(4) It is well-established that the Superior Court's denial of a request for IFP status is an interlocutory ruling subject to the requirements of Supreme Court Rule 42.³ As such, Biggins' appeal from the Superior Court's denial of his request for IFP status is interlocutory. Because Biggins has made no attempt to comply with the requirements of Rule 42, his appeal

¹ In its order, the Superior Court noted that Biggins had filed no fewer than 22 petitions between 1999 and 2008, at least 3 of which had been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Del. Code Ann. tit. 10, § 8804(f).

² *Id.*

³ *Biggins v. Carroll*, Del. Supr., No. 177, 2008, Ridgely, J. (Oct. 3, 2008) (citing *Abdul-Akbar v. Washington-Hall*, 649 A.2d 808, 809 (Del. 1994)).

from the Superior Court's denial of his request for IFP status must be dismissed. As for Biggins' second claim, it was Biggins' obligation to pay the Superior Court filing fee once his IFP petition was denied.⁴ There was, therefore, no abuse of discretion on the part of the Superior Court in dismissing Biggins' mandamus petition when he failed to pay the Superior Court filing fee.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Super. Ct. Civ. R. 3(e).